

## 40 CFR 232 404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING

### § 232.1 Purpose and scope of this part.

Language of Federal Authority	Federal Authority Citation
Part 232 contains definitions applicable to the section 404 program for discharges of dredged or fill material. These definitions apply to both the federally operated program and State administered programs after program approval. This part also describes those activities which are exempted from regulation. Regulations prescribing the substantive environmental criteria for issuance of section 404 permits appear at 40 CFR part 230. Regulations establishing procedures to be followed by the EPA in denying or restricting a disposal site appear at 40 CFR part 231. Regulations containing the procedures and policies used by the Corps in administering the 404 program appear at 33 CFR parts 320-330. Regulations specifying the procedures EPA will follow, and the criteria EPA will apply in approving, monitoring, and withdrawing approval of section 404 State programs appear at 40 CFR part 233.	40 CFR 232.1

### § 232.2 Definitions.

Language of Federal Authority	Federal Authority Citation
<i>Administrator</i> means the Administrator of the Environmental Protection Agency or an authorized representative.	40 CFR 232.2
<i>Application</i> means a form for applying for a permit to discharge dredged or fill material into waters of the United States.	40 CFR 232.2

## G 404 PERMITS

Language of State Authority	Corresponding State Authority Citation
NA	

Language of State Authority	Corresponding State Authority Citation
"Director" means the Director of the Department of State Lands or designee.	OAR 141-014-0210(11)
"Director" means the Director of the Department of State Lands.	ORS 273.006(4)
"Director" — Director of the Department of State Lands	OAR 141-010-0205(4)
A person who is required to have a permit to remove material from the bed or banks or fill any waters of this state shall file a written <i>application</i> with the Director of the Department of State Lands for each individual project before performing any removal or fill.	ORS 196.815(1)

Comments

Comments
There is no equivalent definition in the DSL removal-fill program, but a similar term is used in the state owned submerged and submersible land and in the general provisions for DSL.

<i>Approved program</i> means a State program which has been approved by the Regional Administrator under part 233 of this chapter or which is deemed approved under section	40 CFR 232.2
<i>Best management practices</i> (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States from discharges of dredged or fill material. BMPs include methods, measures, practices, or design and performance standards which facilitate compliance with the section 404(b)(1) Guidelines (40 CFR part 230), effluent limitations or prohibitions under section 307(a), and applicable water quality standards.	40 CFR 232.2

(a) "Applicant" means a landowner, a person authorized by a landowner to conduct a removal or fill activity or a person that proposes a removal or fill activity for construction or maintenance of a linear facility. (b) "Completed application" means a signed permit application form that contains all necessary information for the director to determine whether to issue a permit, including: (A) A map showing the project site with sufficient accuracy to easily locate the removal or fill site; (B) A project plan showing the project site and proposed alterations; (C) The fee required under ORS 196.815; (D) Any changes that may be made to the hydraulic characteristics of waters of this state and a plan to minimize or avoid any adverse effects of those changes; (E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within this state, documentation of existing conditions and resources and identification of the potential impact if the project is completed; (F) An analysis of alternatives that evaluates practicable methods to minimize and avoid impacts to waters of this state; (G) If the project is to fill or remove material from wetlands, a wetlands mitigation plan; and (H) Any other information that the director deems pertinent and necessary to make an informed decision on whether the application complies with the policy and standards set forth in this section. (c) "Linear facility" includes any railway, highway, road, pipeline, water or sewer line, communication line, overhead or underground electrical transmission or distribution line or similar facility.

ORS 196.825(12)

None.

None.

DSL agrees with the language set forth in 40 CFR 233.2 for definition of "approved program".

DSL agrees with the language set forth in 40 CFR 233.2 for definition of "best management practices".

*Discharge of dredged material* . (1) Except as provided below in paragraph (2), the term *discharge of dredged material* means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, the following: (i) The addition of dredged material to a specified discharge site located in waters of the United States; (ii) The runoff or overflow, associated with a dredging operation, from a contained land or water disposal area; and (iii) Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation. (2) The term *discharge of dredged material* does not include the following: (i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable state. (ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material. (iii) Incidental fallback. (3) Section 404 authorization is not required for the following: (i) Any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the U.S. as defined in paragraphs (4) and (5) of this definition; however, this exception does not apply to any person preparing to undertake mechanized landclearing, ditching, channelization and other excavation activity in a water of the United States, which would result in a redeposit of dredged material, unless the person demonstrates to the satisfaction of the Corps, or EPA as appropriate, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States, as defined in paragraphs (4) and (5) of this definition. The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of (ii) Incidental movement of dredged material occurring during normal dredging operations, defined as dredging for navigation in navigable waters of the United States, as that term is defined in 33 CFR part 329, with proper authorization from the Congress or the Corps pursuant to 33 CFR part 322; however, this exception is not applicable to dredging activities in wetlands, as that term is defined at § 232.2(r) of this chapter.

40 CFR 232.2

(iii) Certain discharges, such as those associated with normal farming, silviculture, and ranching activities, are not prohibited by or otherwise subject to regulation under Section 404. See 40 CFR 232.3 for discharges that do not require permits. (4) For purposes of this section, an activity associated with a discharge of dredged material destroys an area of waters of the United States if it alters the area in such a way that it would no longer be a water of the United States.

Note:

Unauthorized discharges into waters of the United States do not eliminate Clean Water Act jurisdiction, even where such unauthorized discharges have the effect of destroying waters of the United States. (5) For purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a de minimis

<p>Dredged material is material that has been dredged from state-owned submerged and submersible land and placed on either state land or land belonging to another person during the process of:</p> <ul style="list-style-type: none"> <li>(a) Constructing, maintaining or improving channels, harbors, marinas or flood control projects;</li> <li>(b) Constructing bridges or other structures;</li> <li>(c) Placing pipelines; or</li> <li>(d) Conducting other similar activities.</li> </ul> <p>“Removal” means: (a) The taking of more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year; or (b) The movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation.</p>	<p>OAR 141-014-0210(13) ORS 196.800(13)</p>
<p>“Waters of this state” means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605 (Definitions), where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.</p>	<p>ORS 196.800(15)</p>
<p>“Ocean shore” means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 (Vegetation line described) or the line of established upland shore vegetation, whichever is farther inland. “Ocean shore” does not include an estuary as defined in ORS 196.800 (Definitions for ORS 196.600 to 196.905).</p>	<p>ORS 390.605(2)</p>
<p>"Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state.</p>	<p>ORS 196.800(3)</p>



Removal as relating to "dredged material";

“Waters of this state” as relating to “waters of the United States”.

“Ocean shore” as relating to “onshore”; there is no equivalent definition in the DSL removal-fill program but a similar term is used in ORS Chapter 390, Scenic Waterways.

<p><i>Discharge of fill material</i> . (1) The term discharge of fill material means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials;” after the words “utility lines; and artificial reefs.(2) In addition, placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.(i) Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a Section 404 permit. Placement of pilings for linear projects, such as bridges, elevated walkways, and powerline structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in waters of the United States for piers, wharves, and an individual house on stilts generally does not have the effect of a discharge of fill material. All pilings, however, placed in the navigable waters of the United States, as that term is defined in 33 CFR part 329, require authorization under section 10 of the Rivers and Harbors Act of</p>	40 CFR 232.2
<p><i>Dredged material</i> means material that is excavated or dredged from waters of the United States.</p>	40 CFR 232.2

<p>“Channel relocation” means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.</p>	<p>ORS 196.800(1)</p>
<p>“Large woody debris” means any naturally downed wood that captures gravel, provides stream stability or provides fish habitat, or any wood placed into waters of this state as part of a habitat improvement or conservation project.</p>	<p>ORS 196.800(7)</p>
<p>See "fill", "material", "waters of the United States", and "channel relocation", above.</p>	
<p>"Dredging" means removal of bed material using other than hand-held tools.</p>	<p>OAR 141-085-510(31)</p>

There is no equivalent definition in the DSL removal-fill program, but a similar term is used in the state's proprietary leasing program.

<i>Effluent</i> means dredged material or fill material, including return flow from confined sites.	40 CFR 232.2
<i>Federal Indian reservation</i> means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.	40 CFR 232.2
<i>Fill material</i> . (1) Except as specified in paragraph (3) of this definition, the term fill material means material placed in waters of the United States where the material has the effect of:(i) Replacing any portion of a water of the United States with dry land; or(ii) Changing the bottom elevation of any portion of a water of the United States.(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.(3) The term fill material does not include trash or garbage.	40 CFR 232.2

"Dredged material" is material that has been dredged from state-owned submerged and submersible land and placed on either state land or land belonging to another person during the process of: (a) Constructing, maintaining or improving channels, harbors, marinas or flood control projects; (b) Constructing bridges or other structures; (c) Placing pipelines; or (d) Conducting other similar activities.	OAR 141-014-0210(13)
None.	
None.	
see "fill", above.	

DSL agrees with the language set forth in 40 CFR 232.2 for definition of "Effluent".

DSL agrees with the language set forth in 40 CFR 232.2 and 233.2 for definition of "federal Indian reservation".

<i>General permit</i> means a permit authorizing a category of discharges of dredged or fill material under the Act. General permits are permits for categories of discharge which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.	40 CFR 232.2
<i>Indian Tribe</i> means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.	40 CFR 232.2
<i>Owner or operator</i> means the owner or operator of any activity subject to regulation under the 404 program.	40 CFR 232.2
<i>Permit</i> means a written authorization issued by an approved State to implement the requirements of part 233, or by the Corps under 33 CFR parts 320-330. When used in these regulations, "permit" includes "general permit" as well as individual permit.	40 CFR 232.2
<i>Person</i> means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.	40 CFR 232.2



<p>“General permit” means a permit for removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.</p> <p>(1)(a) Notwithstanding ORS 196.810 (Permit required to remove material from bed or banks of waters), the Department of State Lands may establish a removal or fill general permit: (A) By rule for processing applications on a statewide or geographic basis; or (B) By order for an applicant or group of applicants to cover activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes. (b) The department must find that the project is in compliance with the review standards set forth in ORS 196.600 (Definitions for ORS 196.600 to 196.655) to 196.921 (Applicability) and would not result in long-term harm to water resources of this state. (c) The department shall condition any such general permit upon actions necessary to minimize environmental effects. (2)(a) Any person proposing to conduct an action under a general permit specified in subsection (1)(a)(A) of this section shall apply to the department in accordance with procedures set forth by the department by rule. (b) Any person proposing to conduct an action under a general permit specified in subsection (1)(a)(B) of this section shall apply to the department in accordance with procedures set forth by the department by order. (3) The department shall amend or rescind any general permit upon a determination that the activities conducted under the permit have resulted in or would result in unacceptable individual or cumulative environmental effects or long-term harm to the water resources of this state. (4) Any person proposing to conduct an action under a general permit shall pay the applicable</p>	<p>ORS 196.800(5) ORS 196.817</p>
<p>“Tribe” means a federally recognized Indian tribe in Oregon.</p>	<p>ORS 273-462(2)</p>
<p>“Private operator” means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose.</p>	<p>ORS 196.815(2)(e)(A)</p>
<p>“Commercial operator” means any person undertaking a project having financial profit as a goal;</p>	<p>ORS 196.815(2)(e)(C)</p>
<p>None.</p>	
<p>“Person” means a person, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.</p> <p>“Person” — A natural person, corporation, association, firm, partnership, joint stock company, quasi-public corporation, political subdivision, and governmental agencies or instrumentalities.</p>	<p>OAR 196.800(10) OAR 141.010-0205 (11)</p>

Definition from "State Lands Generally"
DSL agrees with the language set forth in 40 CFR 232.2 for definition of "Permit".

<i>Regional Administrator</i> means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.	40 CFR 232.2
<i>Secretary</i> means the Secretary of -the Army acting through the Chief of -Engineers.	40 CFR 232.2
<i>State</i> means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in this part, which meet the requirements of § 233.60. For purposes of this part, the word State also includes any interstate agency requesting program approval or administering an approved program.	40 CFR 232.2
<i>State regulated waters</i> means those waters of the United States in which the Corps suspends the issuance of section 404 permits upon approval of a State's section 404 permit program by the Administrator under section 404(h). The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to the high tide line, including wetlands adjacent thereto. All other waters of the United States in a State with an approved program shall be under jurisdiction of the State program, and shall be identified in the program description as required by part 233.	40 CFR 232.2
<p>(a) The term <i>waters of the United States</i> means</p> <p>(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;</p> <p>(2) All interstate waters including interstate wetlands;</p> <p>(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:</p> <p>(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or</p> <p>(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or</p> <p>(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;</p> <p>(4) All impoundments of waters otherwise defined as waters of the United States under the definition;</p> <p>(5) Tributaries of waters identified in paragraphs (a)(1) through (4) of this section;</p>	33 CFR Part 328

None.	
None.	
“Waters of this state” means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.	ORS 196.800(15)
“Waters of This State” means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water	OAR 141-085-0210(107)
“Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.	OAR 141-085-0210(110)
“Intermittent Stream” means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.	
"Tributaries", none.	

DSL agrees with the language set forth in 40 CFR 232.2 for definition of "Regional Administrator".

DSL agrees with the language set forth in 40 CFR 232.2 for definition of "Secretary".

DSL agrees with the language set forth in 40 CFR 232.2 for definition of "State".

DSL agrees that "tributaries of waters identified in paragraphs (a)(1) through (4) of this section" are waters of this state.

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (6) of this section.

(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(b) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(c) The term *adjacent* means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(d) The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

“Territorial Sea” means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.	OAR 141-085-0510(100)
<p>“Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.</p> <p>“Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.</p>	<p>ORS 196.800(17)</p> <p>OAR 141-085-0510(110)</p>
“Converted Wetlands” means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes. “Converted wetlands” does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area.	OAR 141-085-0219(22)
"Waste treatment systems", none.	
see "wetlands", above.	
"adjacent", none.	
"Highest Measured Tide" means the highest tide projected from actual observations within an estuary or tidal bay (see OAR 141-085-0515).	OAR 141-085-0510(44)

Converted wetlands as relating to "prior converted cropland";
DSL agrees that waste treatment systems are not "waters of this state".
DSL agrees with the language set forth in 33 CFR Part 328 for definition of "adjacent".



(e) The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(f) The term *tidal waters* means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

**§ 232.3 Activities not requiring permits.**

Except as specified in paragraphs (a) and (b) of this section, any discharge of dredged or fill material that may result from a

(a) If any discharge of dredged or fill material resulting from the activities listed in paragraph (c) of this section contains an

(c) The following activities are exempt from section 404 permit requirements, except as specified in paragraphs (a) and (b)

Language of Federal Authority	Federal Authority Citation
(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (d) of this section.(ii)(A) To fall under this exemption, the activities specified in paragraph (c)(1) of this section must be part of an established (i.e., ongoing) farming, silviculture, or ranching operation, and must be in accordance with definitions in paragraph (d) of this section. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.(B) Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit whether or not it was part of an es-tab-lished farming, silviculture or ranching -operation.	40 CFR 232.3(c)(1)

"Ordinary High Water Line (OHWL)" means the line on the bank or shore to which the high water ordinarily rises. The OHWL excludes exceptionally high water levels caused by large flood events (e.g., 100-year events).	OAR 141-085-0510(71)
"Tidal Waters" are the areas in estuaries, tidal bays and tidal rivers located between the highest measured tide and extreme low tide (or to the elevation of any eelgrass beds, whichever is lower), that is flooded with surface water at least annually during most years. Tidal waters include those areas of land such as tidal swamps, tidal marshes, mudflats, algal and eelgrass beds and are included in the Estuarine System and Riverine Tidal Subsystem as classified by Cowardin.	OAR 141-085-0510(102)

any of the activities described in paragraph (c) of this section is not prohibited by or otherwise subject to any discharge of any toxic pollutant listed under section 307 of the Act, such discharge shall be subject to any applicable requirements of this section:

Language of State Authority	Corresponding State Authority Citation
<p>NA</p> <p>These exemptions apply in all waters of this state except State Scenic Waterways.</p> <p>(1) Exemptions Do Not Apply to Nonfarm Uses. The exemptions under OAR 141-085-0535(2) and (3) do not apply to any fill or removal that involves changing an area of wetlands to a nonfarm use.</p> <p>(2) Normal Farming and Ranching Activities on Converted Wetlands. "Converted Wetlands" are defined under OAR 141-085-0510. Exempt activities on converted wetlands include:</p> <p>(a) Plowing; (b) Grazing; (c) Seeding; (d) Planting; (e) Cultivating; (f) Conventional crop rotation; and (g) Harvesting.</p> <p>"Waters of This State" means all natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.</p>	<p>OAR 141-085-0535</p> <p>OAR 141-085-0510(107)</p> <p>OAR 196-795 Sec 1.</p>


subject to regulation under this part.  
cable toxic effluent standard or prohibition, and shall

Comments
DSL will not be permitting in agricultural or forestry areas with partial 404 assumption. Proposal for partial state assumption of permit authority. (1) As used in this section: (a)(A) "Development activities" includes dredging, filling, grading, paving, excavation and other activities related to making man-made changes to improved or unimproved real estate. (B) "Development activities" does not include farming, ranching or forestry activities, or activities that would otherwise be considered development activities under subparagraph (A) of this paragraph if the activities are associated with: (i) Farming, ranching or forestry activities;

<p>(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, cause-ways, bridge abutments or approaches, -and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.</p>	<p>40 CFR 232.3(c)(2)</p>
<p>(3) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.</p>	<p>40 CFR 232.3(c)(3)</p>

Fill for Construction, Operation and Maintenance of Certain Dams and Water Diversion Structures. Filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or will be issued under ORS Chapters 537 or 539 and for which preliminary permits or licenses have been or will be issued under ORS 543.010 through 543.610 is exempt.	OAR 141-085-0530(2)
<p>NA</p> <p>Certain Activities Conducted on Exclusive Farm Use (EFU) Zoned Land. The following activities on lands zoned for exclusive farm use as described in ORS 215.203 and designated in the city or county comprehensive plan are exempt:</p> <p>(a) Drainage or maintenance of farm or stock ponds;</p> <p>(c) Subsurface drainage by deep ripping, tiling or moling, limited to converted wetlands.</p> <p>Agricultural Drainage Ditch Maintenance. Exempt maintenance of agricultural drainage ditches under OAR 141-085-0530(4) includes disposal of dredged material in a thin layer on converted wetlands, provided such disposal does not change wetland to upland. For the purposes of this exemption, "ditch" is defined in 141-085-0510(28).</p>	<p>OAR 141-085-0535(3)</p> <p>OAR 141-085-0535(7)</p>

DSL will not be permitting in agricultural areas with partial 404 assumption.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the United States. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

40 CFR 232.3(c)(4)

(5) Any activity with respect to which a State has an approved program under section 208(b)(4) of the Act which meets the requirements of section 208(b)(4)(B) and (C).

40 CFR 232.3(c)(5)

<p>Erosion Control Methods. The following erosion control measures must be installed at the construction site before construction and maintained during and after construction to prevent erosion and minimize movement of soil into waters of this state: (a) All exposed soils must be stabilized during and after construction in order to prevent erosion and sedimentation; (b) Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands; (c) To prevent erosion, use of compost berms, impervious materials or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours; (d) Unless part of the permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings or seeding. Sterile grass may be used instead of native vegetation for temporary sediment control if native vegetation is unavailable. If soils are to remain exposed for more than seven days after completion of the permitted work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed; (e) Where vegetation is used for erosion control on slopes steeper than 2:1, tackified seed mulch must be used so the seed does not wash away before germination and rooting; (f) Dredged or other excavated material must be placed on unland wetlands. (g) Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized; and (h) All erosion control structures must be removed when the project is complete and soils are stabilized and vegetated.</p>	<p>OAR 141-093-0135(9)</p>
<p>NA DSL does not have any programs under section 208(b)(4) of the Act. (Areawide Waste Treatment Mgmt)</p>	



DSL agrees with the language set forth in 40 CFR 232.3 for the definition of "construction site".

<p>(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the United States shall be held to the minimum feasible number, width, and total length consistent -with the purpose of specific farming, -silvicultural or mining operations, -and local topographic and climatic -conditions;(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the United States;(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;(iv) The fill shall be properly stabilized and maintained to prevent erosion during and following construction;(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within the waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the United States shall be kept to a minimum;(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;(viii) Borrow material shall be taken from upland sources whenever feasible;(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;(xi) The discharge shall not be located in the proximity of a public water. The discharge shall not occur -in areas of concentrated shellfish -production;(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.</p>	<p>40 CFR 232.3(c)(6)</p>
<p>(d) For purpose of paragraph (c)(1) of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined</p>	
<p>(1) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality, or yield.</p>	<p>40 CFR 232.3(d)(1)</p>
<p>(2) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.</p>	<p>40 CFR 232.3(d)(2)</p>

NA (b) Maintenance of existing farm roads in such a manner as to not significantly adversely affect wetlands or any other waters of this state;	OAR 141-085-0535(3)
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l as follows:

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<p>(3)(i) Minor drainage means:(A) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit;(B) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;(C) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production or rice, cranberries, or other wetland crop species.Note:The provisions of paragraphs (d)(3)(i) (B) and (C) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.</p>	<p>40 CFR 232.3(d)(3)</p>
<p>(D) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drain-age-ways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exemption.(ii) Minor drainage in waters of the United States is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adequate to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming).In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway -requires a permit.</p>	<p>40 CFR 232.3(d)(3)</p>

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NA	

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<p>(4) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing, as described above, will never involve a discharge of dredged or fill material.</p>	<p>40 CFR 232.3(d)(4)</p>
<p>(5) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.(e) Federal projects which qualify under the criteria contained in section 404(r) of the Act are exempt from section 404 permit requirements, but may be subject to other State or Federal requirements.</p>	<p>40 CFR 232.3(d)(5)</p>



NA

“**Plowing**” means all forms of tillage and similar physical means for the breaking up, cutting, turning over and stirring of soil to prepare it for planting crops. Plowing does not include deep ripping or redistribution of materials in a manner that changes any waters of this state to upland.

OAR 141-085-0510(76)

NA

DSL will not be permitting in agricultural or forestry areas with partial 404 assumption.

DSL will not be permitting in agricultural or forestry areas with partial 404 assumption.

**Cell:** E10

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Remove reference to Division 010 rule. This pertains to submerged and submersible lands permits, and would not apply in the removal-fill context.

**Cell:** E34

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Comment:

Remove reference to Division 010 rule. This pertains to submerged and submersible lands permits, and would not apply in the removal-fill context.